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JUN 29 2004

In re Application of
Joseph, et al.
Application No. 10/659,969
Filed: September 11, 2003
Attorney Docket No. KCC 4979.1 (K-C
19,378B)
For: ABSORBENT PRODUCTS
COMPRISING A MOISTURIZING AND
LUBRICATING COMPOSITION

OFFICE OF PETITIONS
DECISION DISMISSING
PETITION

This is a decision on the petition under 37 CFR 1.53(e), filed April 26, 2004, requesting that page 19 of the specification be accorded a filing date of September 11, 2003.

The application was filed on September 11, 2003. On April 14, 2004, the Office of Initial Patent Examination mailed a "Notice to File Missing Parts of Nonprovisional Application" (Notice) informing petitioners, *inter alia*, that page 19 appeared to have been omitted.

In response to the Notice, petitioner timely filed the present petition. Petitioners request that the application be accorded a filing date of September 11, 2003 with page 19 as part of the original application papers based on their contention that page 19 was received in the Patent and Trademark Office (PTO) on September 11, 2003. In support, the petition is accompanied by a copy of applicants' postcard receipt showing an Office of Initial Patent Examination generated barcode showing September 11, 2003 as the date of receipt. The postcard lists, *inter alia*, that the filing included 49 total pages of application. In addition, petitioners point to their Express Mail log and label with a date-in of September 11, 2003 to establish that page 19 was deposited in Express Mail on September 11, 2003.

Petitioners are advised that the provisions of 37 CFR 1.10(e) cannot be utilized to prove the contents of a mailing. MPEP 513 states, "Where there is a dispute as to the contents of correspondence submitted to the Office,...an applicant may not rely upon the provisions of 37 CFR 1.10(e) to establish what document(s)... were filed in the Office with such correspondence. Rather, where the records of the Office (e.g. the file of the application) contain any document(s)... corresponding to the contents of the correspondence at issue, the Office will rely upon its official record of the contents of such correspondence in absence of convincing evidence (e.g., a postcard receipt under MPEP 503 containing specific itemization of the document(s)... purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s)... that is/are not among the official records of the Office."

A properly itemized return postcard constitutes *prima facie* evidence that the items were filed on the date stamped thereon. However, a postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. MPEP 503. The itemized postcard in this case was not properly itemized. Therefore, the Office has no way of verifying whether page 19 was filed on September 11, 2003.

As stated in MPEP 503, “[M]erely listing on the postcard...”patent application” will not serve as a proper receipt for each of the required components of an application” The postcard proves that 49 total pages of application were filed on September 11, 2003.

An independent review of the application file reveals that more than 49 pages were filed on September 11, 2003. The Office received more than what was itemized on the postcard. Therefore, the postcard receipt cannot be relied upon to prove missing page 19 of the specification was received on September 11, 2003.

The petition under 37 CFR 1.53(e) is dismissed. Any request for reconsideration should be submitted within 2 months of the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a).

The application is being returned to the Office of Initial Patent Examination for further processing. Page 19 is not considered part of the original application papers and will not be processed as such.

Petitioners should submit an amendment to the specification removing sentence fragments on page 18 and 20 and renumbering the specification.

Further correspondence with respect to this matter should be addressed as follows:

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Any inquiries pertaining to this matter may be directed to the undersigned at (703) 308-6712.



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